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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-202676

DATE: September 10, 1981

MATTER OF: Signal, Inc.

DIGEST:

Where a solicitation contains applicable wage rate determination and bidder executes and returns bid form that incorporates Davis-Bacon Act labor provisions by reference, failure to acknowledge amendment to the solicitation which merely added the labor provisions originally incorporated by reference may be waived as minor informality.

Signal, Inc. protests the rejection of its bid as nonresponsive due to its failure to acknowledge an amendment under General Services Administration (GSA) invitation for bids No. GS-06B-06120 issued by GSA's Region 6 in Kansas City, Missouri. The amendment physically incorporated two standard GSA forms that were omitted from the solicitation. The forms deal with the requirements of the Davis-Bacon Act, 40 U.S.C. § 276 et seq. (1976).

The protest is sustained.

Background

This solicitation is for the installation of an emergency warning and fire alarm system in a Federal office building in St. Louis, Missouri, and involves construction activities covered by the Davis-Bacon Act. While the initial solicitation included the current Department of Labor wage rate determination for this type of work in the St. Louis area, it did not contain either GSA Standard Form 19-A (Rev. 1-79) or GSA Form 1083. The former sets forth the labor

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standards provisions for Federal construction contracts as required by the Davis-Bacon Act; the latter contains certain supplemental provisions relating to the labor standards. When this oversight was discovered, the contracting officer issued amendment No. 2 adding the missing forms to the solicitation.

Bids were opened February 3, 1981, disclosing Signal's \$138,828 bid as low, and K. Bridges Company's \$138,883 bid as second low. Signal did not acknowledge receipt of amendment No. 2.

By letter of March 20, the contracting officer advised Signal that its bid had been rejected as nonresponsive for failure to acknowledge amendment No. 2. The contract therefore was awarded to the second low bidder, Bridges. Signal asserted that it never received amendment No. 2, and that the amendment's contents would not have altered the bid price in any case.

It is the contracting officer's view that in the absence of amendment No. 2, Signal's bid did not require it to accept the statutorily-mandated labor standards provisions of Standard Form 19-A in the resulting contract. He also concluded that Signal's failure to acknowledge the supplemental labor provisions contained in GSA Form 1083 was significant because Form 1083 contained certain material provisions.

GSA Headquarters disagrees with the contracting officer and concludes that Signal's failure to acknowledge amendment No. 2 should have been waived as a minor informality under Federal Procurement Regulations § 1-2.405(d) (1964 ed.). The regulation allows contracting officers to waive a failure to acknowledge the receipt of an amendment where the amendment involves only a matter of form. GSA notes that Standard Form 21, executed and returned by Signal, bound it "to perform all work--in strict accordance with--Labor Standard Provisions Applicable to Contracts in Excess of \$2,000 (Standard Form 19-A)." In light of this binding agreement to accept the labor standards provisions, GSA concludes that the contracting officer had the right to include these provisions in any resulting contract, thus satisfying the requirement in FPR § 1-16.402 that the labor standards provisions be physically incorporated in the contract.

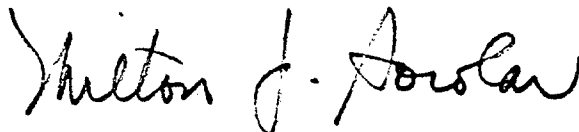
GSA also believes that the rights of employees with respect to wages are protected because the original solicitation contained the requisite minimum wage rate determination, and among other things, Standard Form 19-A contains a provision which requires the contractor to pay minimum wage rates and fringe benefits specified in the Secretary of Labor's wage rate determination included in the contract.

We agree with GSA with respect to the legal effect of incorporating Standard Form 19-A into the contract by reference. Incorporation of substantive terms and conditions into a contract by reference is a recognized method of contract drafting and legally binds the parties to those terms referred to in the solicitation and any resulting contract. See Patterson Pump Company; Allis-Chalmers Corporation, B-200165, December 31, 1980, 80-2 CPD 453. Likewise the provisions of GSA Form 1083 simply emphasize certain aspects of the statutory labor standards provisions already included in the solicitation. These provisions therefore add nothing substantive to the solicitation and the lack of an acknowledgement of the amendment adding them to the solicitation is merely a matter of form.

Accordingly, we view the contracting officer's rejection of Signal's bid as incorrect since Signal's failure to acknowledge the amendment should have been waived. FPR § 1-2.405(d).

Since this contract has been substantially performed, there exists no meaningful remedy which we can recommend. Clearly, a termination of the Bridges' contract would not be in the best interest of the Government.

The protest is sustained.



Acting Comptroller General
of the United States